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Hannah & Sons Construction Co., Inc. and Metropolitan Regional Council of Philadelphia and Vicinity, United Brotherhood of Carpenters and Joiners of America. Case 4-CA-28916

March 22, 2004

## DECISION AND ORDER

## BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER AND MEISBURG

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the compliance specification.

On April 21, 2003, the National Labor Relations Board issued an Order<sup>1</sup> that, among other things, ordered the Respondent to reimburse Metropolitan Regional Council of Philadelphia and Vicinity, United Brotherhood of Carpenters and Joiners of America (the Council) for all legal and other expenses incurred in defending against the Respondent's lawsuit in the Court of Common Pleas of Philadelphia County, with interest. On August 28, 2003, the United States Court of Appeals for the Third Circuit issued its judgment enforcing in full the Board's Order.<sup>2</sup>

A controversy having arisen over the amount of legal fees and other expenses owed to the Council, on December 19, 2003, the Regional Director issued a compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.

By letter dated January 9, 2004, the regional attorney advised the Respondent that no answer to the compliance specification had been received and that unless an answer was filed by January 16, 2004, a motion for default judgment would be filed. The Respondent did not file an answer.

On January 20, 2004, the General Counsel filed with the Board a motion for default judgment, with exhibits attached. On January 23, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

<sup>2</sup> 03-3179.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

## Ruling on Motion for Default Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the respondent fails to file an answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the espondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the motion for default judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In its response to the Notice to Show Cause, the Respondent asserts that its president and construction manager have filed for bankruptcy, and that it "is without assets to comply with the provision to eimburse the Carpenters Union." The Respondent's financial situation does not constitute a basis for denying the General Counsel's motion for default judgment.<sup>3</sup> The issue in a compliance proceeding is the amount due and not whether a respondent is able to pay.<sup>4</sup> Further, it is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition.<sup>5</sup>

The Respondent's response also contends that its counsel continued to prosecute the unlawful State court lawsuit against the Union even though counsel "was told not to continue with the matter." The Respondent has offered no factual support for this contention. Nor does it request a hearing to address the matter. However, even assuming arguendo that this contention is true, it relates solely to issues that were, or could have been, litigated in the underlying unfair labor practice case, and is not relevant to the issues raised by the instant compliance specification and the General Counsel's motion. Further, as the Respondent did not raise this issue in the underlying unfair labor practice proceeding, it cannot raise it in this

<sup>&</sup>lt;sup>1</sup> Unpublished Order adopting, in the absence of exceptions, the Supplemental Decision on Remand of Administrative Law Judge Benjamin Schlesinger issued on February 24, 2003 (JD-19-03).

<sup>&</sup>lt;sup>3</sup> See, e.g., *Judd Contracting, Inc.*, 338 NLRB No. 81 fn. 3 (2002), enfd. 76 Fed.Appx. 651 (6th Cir. 2003).

<sup>&</sup>lt;sup>4</sup> Columbia Engineers, 268 NLRB 337 (1983); Star Grocery Co., 245 NLRB 196, 197 (1979).

<sup>&</sup>lt;sup>5</sup> See, e.g., *Cardinal Services*, 295 NLRB 933 fn. 2 (1989), and cases cited there. Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See id., and cases cited therein; *NLRB v. 15th Avenue Iron Works, Inc.*, 964 F.2d 1336, 1337(2d Cir. 1992). Accord: *Aherns Aircraft, Inc. v. NLRB*, 703 F.2d 23 (1st Cir. 1983).

proceeding. See *Yonkers Associates, 94 L.P.*, 340 NLRB No. 147, slip. op. at 3 (2003); *Weldun International, Inc.*, 340 NLRB No. 79 (2003).<sup>6</sup>

In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's motion for default judgment. Accordingly, we conclude that the legal and other expenses due the Council are as stated in the compliance specification and we will order the Respondent to pay that amount to the Council, plus interest accrued to the date of payment.

## **ORDER**

The National Labor Relations Board orders that the Respondent, Hannah & Sons Construction Co., Inc., Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall pay Metropolitan Regional Council of Philadelphia and Vicinity, United Brotherhood of Carpenters and Joiners of America, \$8,004.28, plus interest as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Dated, Washington, D.C. March 22, 2004

Robert J. Battista,	Chairman
Peter C. Schaumber,	Member
Ronald Meisburg,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>&</sup>lt;sup>6</sup> Chairman Battista does not pass on whether this matter should have been raised in the merits phase of this case. Accepting the conclusion that the lawsuit was unlawful, it may well be that a compliance proceeding is an appropriate forum in which to raise the contention that the monetary remedy should be tolled. However, in the instant case, there is an insufficient basis for tolling the remedy. Although the Respondent avers that it told its lawyer to discontinue the lawsuit, the Respondent does not say that it withdrew power of attorney. Its lawyer continued the lawsuit, and the Union continued to incur expenses. Accordingly, Chairman Battista concludes that there is no basis to toll the monetary remedy.